**P**UBLIC MATTER **FILED MAY 24, 2010**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT – LOS ANGELES**

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| In the Matter of<br><br>**KEVIN PAUL BJERREGAARD,**<br><br>**Member No. 127949,**<br><br>A Member of the State Bar. | ) | Case Nos.: **05-O-01026-RAH;**<br>**05-O-05006-RAH** (06-0-10876; 06-O-12272) **(Consolidated.)**<br><br>**DECISION & ORDER OF INACTIVE ENROLLMENT** |

## I. INTRODUCTION

In this consolidated original disciplinary proceeding, which proceeded by default, the Office of the Chief Trial Counsel of the State Bar of California (hereafter OCTC) charges respondent **KEVIN PAUL BJERREGAARD**[1] with a total of twenty-eight counts of professional misconduct in six separate client matters. For the reasons set forth below, the court finds respondent culpable on 24 of the 28 counts and concludes that the appropriate level of discipline for the found misconduct is disbarment.

OCTC was represented by Deputy Trial Counsel Bita Shasty. Respondent initially appeared and participated in this proceeding in propria persona. But, as noted below, his default was entered when he failed to appear for trial.

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[1] Respondent was admitted to the practice of law in the State of California on June 18, 1987, and has been a member of the State Bar of California since that time. He has no prior record of discipline.

## II. KEY PROCEDURAL HISTORY

On February 22, 2008, OCTC filed the notice of disciplinary charges (hereafter NDC) in case number 05-O-05006-RAH and properly served a copy of that NDC on respondent. Then, on March 4, 2008, OCTC filed the NDC in case number 05-O-01026-RAH and properly served a copy of it on respondent. On April 3, 2008, the court consolidated case numbers 05-O-01026-RAH and 05-O-05006-RAH for all purposes.

Then, on August 22, 2008, respondent filed a separate response to each of the two NDC's in this consolidated proceeding. Thereafter, the case was called for trial on February 23, 2010. Even though respondent was given adequate notice of the trial setting and warned of the consequences of not appearing at trial, respondent failed to appear at trial when his case was called. Accordingly, on February 23, 2010, the court entered respondent's default (Rules Proc. of State Bar, rule 201(b)) and, as mandated by Business and Professions Code section 6007, subdivision (e)(1),[2] ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California on February 26, 2010.[3] Also, on February 23, 2010, the court also admitted OCTC's exhibits 1 through 48 into evidence and then took the consolidated proceeding under submission for decision without a hearing.

Finally, on May 11, 2010, this consolidated proceeding was reassigned to the undersigned judge for all purposes.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Under section 6088 and Rules of Procedure of the State Bar, rules 200(d)(1)(A) and 201(c), upon the entry of respondent's default, the factual allegations (but not the charges or

[2] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

[3] An inactive active member of the State Bar of California cannot lawfully practice law in this state. (§ 6126, subd. (b).)

conclusions) set forth in the two NDC's in this consolidated proceeding were deemed admitted and no further proof was required to establish the truth of those facts. Accordingly, the court adopts the facts alleged (but not the charges or the conclusions) in the two NDC's as its factual findings. Briefly, those facts establish or fail to establish the following charged disciplinary violations by clear and convincing evidence.[4]

**A. Laguna Collection Client Matter (Case No. 05-0-05006-RAH)**

In April 2002, four of the tenants in the Laguna Collection building (hereafter collectively "LC tenants")[5] retained respondent to represent them in a dispute with Carrion Ltd., their landlord, over the common area maintenance charges.

On May 15, 2003, respondent filed, as the attorney for the LC tenants, a complaint against Carrion seeking declaratory relief and an accounting of the common area maintenance charges. Respondent filed the complaint in the Orange County Superior Court.

Later that same month, the superior court filed an order appointing accountants to prepare a forensic accounting of the common area maintenance charges. At the same time, the superior court ordered that the LC tenants pay one-half of the accountant's fees and that Carrion pay the

[4] Notwithstanding the entry of respondent's default, "All reasonable doubts must [still] be resolved in [his] favor . . . , and if equally reasonable inferences may be drawn from a proven fact, the inference which leads to a conclusion of innocence rather than guilt [must] be accepted [by the court]. [Citation.]" (*Bushman v. State Bar* (1974) 11 Cal.3d 558, 563.) Thus, each time OCTC alleges in one of the NDC's that respondent either knew a fact or was grossly negligent in not knowing the fact, the allegation establishes only that respondent was grossly negligent in not knowing the fact. Only the lesser of a disjunctive allegation that has been deemed admitted is established by clear and convincing evidence. (Cf. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, 359 [taking as established only the lesser of the charges in each count]; *In the Matter of Boyne* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 389, 404 & fn. 11.)

[5] The four LC tenants are: Limar, LLC, dba the "Aegean Café"; Connie Apple dba "Pure Living"; Brad Morrison dba "Gregor Stevens Salon"; and How Original.

other one-half of those fees. The superior court gave respondent and the accountants notice of its orders.

In early fall 2003, the superior court set the LC tenants' lawsuit for trial beginning on August 23, 2004. About one month later, Carrion filed (1) an answer to the LC tenants' complaint and (2) a cross-complaint against the LC tenants.

On about August 20, 2004, respondent filed an ex parte application to continue the trial in the LC tenants' lawsuit. Respondent, however, did not appear at the hearing on his ex parte application to continue the trial. Nor did respondent appear for trial on August 23, 2004. Accordingly, the superior court denied respondent's ex parte application; dismissed the LC tenants' complaint against Carrion; conducted the trial on Carrion's cross-complaint against the LC tenants; and entered judgment in favor of Carrion on its cross-complaint.

On November 2, 2004, respondent filed a motion to vacate the judgment in favor of Carrion and to reset the matter for trial (hereafter November 2, 2004 motion to vacate judgment and reset the matter for trial). Not long thereafter, the superior court granted the November 2, 2004 motion to vacate judgment and reset the matter for trial.

After respondent filed the complaint against Carrion on May 15, 2003, respondent did not perform any legal service of value to the LC tenants until he prepared and filed the November 2, 2004 motion to vacate judgment and reset the matter for trial. Moreover, after respondent prepared and filed that motion on November 2, 2004, respondent did not perform any further legal service of value to the LC tenants.

On November 3, 2004, the court-appointed accountants mailed respondent a letter stating that the LC tenants' share of the accounting fees was $8,487.78; that the LC tenants had paid only $1,750 of that amount; and that the LC tenants stilled owed the accountants $6,737.78 ($8,487.78 less $1,750). Respondent received that letter.

On December 13, 2004, the accountants mailed a second letter to respondent. In that second letter, the accountants (1) demanded that the LC tenants pay the $6,737.78 that they owed the accountants and (2) warned that they (i.e., the accountants) would refer the $6,737.78 unpaid balance to an attorney for collection. Respondent received that second letter.

On January 13, 2005, the accountants mailed a third letter to respondent. In that third letter, the accountants stated that they were referring the $6,737.78 unpaid balance to an attorney for collection. Respondent received the third letter.

Respondent never paid the $6,737.78 balance due. Nor did respondent respond to any of the accountants' three letters or otherwise communicate with the accountants.

On February 22, 2005, Attorney Douglas Pettibone, the attorney for the accountants, mailed a letter to respondent in which Attorney Pettibone demanded payment of the $6,737.78 balance due. Respondent received the letter.

On February 28, 2005, respondent faxed, to the LC tenants, a five-page bill for the legal services, which allegedly covered the six-month period from August 2004 through February 2005. The bill was for $9,762.50 in attorney's fees plus $10,180.46 in costs (included in these costs were $8,277.37[6] in court-appointed accountant's fees). The LC tenants promptly paid respondent's bill in full in early March 2005.

On March 18, 2005, Attorney Pettibone mailed, to respondent and to three of the four LC tenants, a letter demanding payment of the $6,737.78 balance due. Respondent and those three LC tenants received that letter.

Thereafter, respondent met with one of the LC tenant clients. The client asked respondent for proof that he had paid the $6,737.78 to the accountants, and respondent showed

[6] It is unclear why respondent billed the LC tenants for only $8,277.37 when the LC tenants' share of the accountant's fees was $8,487.78.

her a copy of the front side of a $6,737.78 check, dated January 30, 2005, drawn on respondent's general account, and made payable to the accountants. "Court Ordered Accting" was written on the check's memo line.

When the client asked to see the cancelled check, respondent went into his office, spoke on the telephone, came back out, and told the client that he just called the bank and was told that his $6,737.78 check to the accountants cleared his bank on February 15, 2005. Respondent then wrote "cleared -- 2/15/05" on the copy of the $6,737.78 check and gave the copy to the client telling her that he would take care of Attorney Pettibone. When respondent made these statements to the client, respondent was grossly negligent in not knowing that his statements were false.

In May 2005, Attorney Pettibone filed, in the superior court, a breach-of-contract complaint against the LC tenants for the accountants. In June 2005, Pettibone served a summons and copy of the complaint on each of the LC tenants. After the LC tenants were served, respondent told two of them that Attorney Pettibone was mistaken in filing the lawsuit because respondent had already paid the accountants their fees. In addition, respondent assured those two clients that he would see that the lawsuit against them was dismissed. When respondent made these statements, respondent was grossly negligent in not knowing that his statements were false.

Respondent did not pay the $6,737.78 balance due to the accountants or to Attorney Pettibone. Nor did respondent take any action on behalf of his LC tenant clients in the lawsuit Attorney Pettibone filed against them.

In July 2005, Attorney Pettibone filed a request for entry of default against each of the LC tenants and sought a judgment of $7,585.57 ($6,737.78 in unpaid accountant's fees plus $847.50 in costs). Thereafter, the superior court entered the LC tenants' defaults. On July 30, 2005, respondent faxed, to Attorney Pettibone, a letter in which respondent stated that "the

outstanding balance . . . was supposedly paid by his former law partner" and that he would "immediately resolve this matter by paying the amount outstanding." Pettibone received respondent's letter.

On August 1, 2005, Attorney Pettibone mailed respondent a letter stating that, even though the LC tenants owed the accountants $6,737.78, he would not seek to enter judgments against the LC tenants because of respondent's agreement to pay. Respondent received the letter.

On August 18, 2005, Attorney Pettibone mailed respondent a letter (1) requesting that respondent pay the amount outstanding as respondent had promised in his July 30, 2007 letter to Pettibone and (2) threatening to obtain a judgment against the LC tenants if respondent did not pay $6,737.78. Respondent received that letter.

On September 14, 2005, Attorney Pettibone mailed respondent and the LC tenants letters stating that, even though he had attempted to collect the $6,737.78 balance due from respondent, respondent failed to pay. In those same letters, Pettibone stated that he was going to file a request for entry of judgment against the LC tenants unless they paid the accountants $7,585.57 within three days. Respondent and the LC tenants received those letters.

A few days later, one of the LC tenants telephoned Attorney Pettibone, who confirmed that respondent had neither paid the $6,737.78 balance due nor responded to Pettibone's demands for payment. Thereafter, on September 26, 2005, two of the LC tenants paid the accountants $7,585.57 to settle the lawsuit against the four LC tenants.

In about October 2005, the LC tenants terminated respondent's employment because they learned that respondent, for many months, had not performed any legal services of value to them.

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***Count One – Failure to Perform (Rules Prof. Conduct, rule 3-110(A))***[7]

The record clearly establishes that respondent willfully violated rule 3-110(A) because he repeatedly, if not intentionally, failed to perform legal services competently by not performing any legal services of value to the LC tenants from May 15, 2003, through September 2005 other than drafting the motion to vacate that he filed on November 2, 2004.

***Count Two – Failure to Communicate (§ 6068, subd. (m))***

In count two, OCTC charges that respondent willfully violated his duty, under section 6068, subdivision (m), to keep his clients reasonably informed of significant developments in their cases because he failed to inform the LC tenants that: "the matter had been set for trial on August 23, 2004; he had failed to appear for the trial on or about August 23, 2004; their complaint had been dismissed; and judgment had been entered for Carrion on [its] cross[-]complaint." The court cannot agree. Even though the record clearly establishes that respondent failed to inform the LC tenants of these significant developments in their lawsuit, respondent's failure to inform his clients of these developments is clearly encompassed within the rule 3-110(A) violation charged and found in count one, which supports greater discipline.[8] "It is . . . inappropriate to find redundant charged violations. (Citations.)" (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148; accord, *In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 786-787.) Accordingly, count two is dismissed with prejudice as it is redundant of the rule 3-110(A) violation in count one.

[7] Unless otherwise indicated, all further references to rules are to these Rules of Professional Conduct of the State Bar of California.

[8] In fact, notifying a client of significant developments is, by definition, performing a legal service of significant value to the client. Thus, had respondent communicated these significant developments to his clients, the court would have found a much less egregious violation of rule 3-110(A) in count one.

***Count Three – Moral Turpitude (§ 6106)***

The record establishes that, in willful violation of section 6106, respondent engaged in acts involving moral turpitude by stating to one or more of his LC tenant clients that he paid the accountant's fees, that he called his bank and was told that his $6,737.78 check to the accountants had cleared the bank, and that Attorney Pettibone was mistaken when he filed the lawsuit against the LC tenants when respondent was grossly negligent in not knowing that his statements were false.

***Count Four – Trust Account Violations (Rule 4-100(A))***

According to OCTC, when the LC tenants paid respondent's February 28, 2005 bill, respondent was required, under rule 4-100(A), to deposit at least $8,277.37 of the tenants' payment into his client trust account. The court cannot agree. First, resolving all reasonable doubts in respondent's favor, the court finds that respondent previously paid the accountants $1,750 on behalf of the LC tenants. Thus, respondent was entitled to immediate reimbursement from the LC tenants for that $1,750. Second, OCTC has not cited any authority, and the court is unaware of any, under which the $8,277.37 respondent billed and collected from the LC tenants for accountant fees would be classified as "advances for costs [or] expenses" that must be deposited into a trust account under rule 4-100(A). When respondent billed and collected the $8,277.37 in accountant fees from his clients, the costs or expense had already been incurred.

In any event, the gravamen of respondent's misconduct with respect to the $8,277.37 in accountant fees that he billed and collected from his clients is not that he failed to deposit the $8,277.37 into his client trust account, but that he misappropriated $6,527.37 ($8,277.37 less $1,750 reimbursement for the fees respondent previously paid for his clients) of it willful violation of section 6106. That section 6106 violation is adequately charged and found in count five below. Moreover, the charged rule 4-100(A) violation in count four is in the nature of a

lesser included offense of the section 6106 violation charged and found in count five. (Cf. *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 321; *In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 25.) Accordingly, count four is dismissed with prejudice.

***Count Five – Misappropriation - Moral Turpitude (§ 6106)***

The record establishes that respondent misappropriated, for his own use and benefit, $6,527.37 out of the $8,277.37 in accountant fees that his LC tenant clients paid him in early March 2005. Because the record establishes only that respondent was grossly negligent in not knowing that his statements about the accountant fees to his LC tenant clients were false, the record establishes only that respondent misappropriated the $6,527.37 through gross negligence. Nonetheless, it is well established that the misappropriation of client funds resulting from an attorney's gross negligence always involves moral turpitude in willful violation of section 6106.

**B. Arroyo Client Matter (Case No. 06-0-10876-RAH)**

In May 2005, Nick and Erin Arroyo told respondent that they were planning on hiring new employees and expanding their mortgage business. The Arroyos hired respondent (1) to analyze their corporate structure, insurance coverage, and compliance with the laws governing the mortgage industry; (2) to develop strategies for the growth of their business; and (3) to write a report on these issues. For this work, the Arroyos were to pay respondent a $2,000 flat fee. Under the terms of their agreement, the Arroyos were to pay respondent $1,000 for him to begin the work and the remaining $1,000 when respondent completed the written report.

On about May 19, 2005, the Arroyos paid respondent $1,000 to begin work on their matter; gave respondent various original business documents; and told respondent that time was of the essence because they were setting up meetings about the expansion of their business.

Between June and mid-September 2005, the Arroyos called respondent about two or three times a month, but were unable to speak with him. Therefore, each time the Arroyos called

respondent, they left a voicemail message, for respondent, asking for an update on their matter. Even though respondent received those multiple messages, respondent did not respond to them. Nor did respondent otherwise communicate with the Arroyos or deliver a completed report to them.

The Arroyos were finally able to speak with respondent in late September 2005. At that time, respondent told the Arroyos that he had not been able to work on their matter. In response, the Arroyos terminated respondent's services and asked respondent to refund the unearned fee and to return the original business documents that they gave him in May, and respondent agreed to do so. Thereafter, on September 12, 2005, respondent mailed the Arroyos a $1,000 check drawn on his general office account. The Arroyos deposited the check into their bank account, but respondent's bank returned the check unpaid because of insufficient funds.

Between about late September 2005 and February 2006, the Arroyos called respondent about two or three times a month seeking a refund of the $1,000 and the return of their business documents. The Arroyos were unable to reach respondent. Thus, they left a voicemail message for respondent each time they telephoned him. Respondent, however, did not respond to those voicemail messages even though respondent received them. Nor did respondent otherwise communicate with the Arroyos, refund the unearned $1,000 to them, or return the business documents to them.

On July 13, 2006, and again on July 27, 2006, a State Bar investigator mailed respondent a letter in which the investigator asked respondent to respond, in writing, to specific allegations of misconduct with respect to the Arroyo client matter. Even though respondent received both of those letters, he did not respond to either of them. Nor did respondent otherwise communicate with the investigator.

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***Count Six – Failure to Perform (Rule 3-110(A))***

In count six, OCTC charges that "By failing to prepare the Report despite repeated requests to do so when it was understood that time was of the essence, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence" in willful violation of rule 3-110(A). However, there is no clear and convincing evidence establishing that one or more persons repeatedly asked respondent to prepare the report or that respondent knew that time was really of the essence. Accordingly, the court declines to find respondent culpable of the rule 3-110(A) violation charged in count six and dismisses count six with prejudice.

***Count Seven – Failure to Communicate (§ 6068, subd. (m))***

The record establishes that respondent willfully violated section 6068, subdivision (m). Respondent failed to promptly respond to the status inquiries of his clients when he failed to return the multiple voicemail messages that the Arroyos left for him between June and mid-September 2005 asking about the status of their matter.

***Count Eight – Failure to Return Client Papers (Rule 3-700(D)(1))***

The record clearly establishes that respondent willfully violated his rule 3-700(D)(1) by failing to return the Arroyos' original business documents in accordance with their request in late September 2005.

***Count Nine -- Failure to Refund Unearned Fees (Rule 3-700(D)(2))***

The record clearly establishes that respondent willfully violated rule 3-700(D)(2) by failing to refund the unearned $1,000 flat fee payment to the Arroyos in accordance with their September 2005 request.

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***Count Ten -- Failure to Cooperate in State Bar Investigation (§ 6068, subd. (i))***

The record clearly establishes that respondent willfully violated section 6068, subdivision (i), by deliberately failing to respond to the State Bar investigator's letters dated July 13, 2006, and July 27, 2006.

**C. Issacs Client Matter (Case No. 06-0-12272-RAH)**

In September 2004, Michael Issacs hired respondent to represent him in a dental malpractice action against his two dentists, who practiced together at the same dental group. On September 22, 2004, respondent mailed a notice of intention to sue letter to the two dentists stating that Issacs intended to sue them for dental malpractice and to seek almost $2 million in damages. Also, on September 22, 2004, respondent mailed a letter to Issacs's dental insurance carrier, Safeguard Health Plans, Inc., stating that Issacs intended to sue Safeguard for dental malpractice and to seek damages of almost $2 million.

On November 29, 2004, respondent faxed letters to the two dentists and Safeguard stating that he would file dental malpractice action against them on about December 22, 2004. In about November 2004, Issacs went to respondent's law office to obtain a status report on his dental malpractice action. Respondent told Issacs that respondent was working on the matter and provided Issacs with copies of the notices of intention to sue letters to the two dentists and a copy of a draft complaint in the matter.

Between about January and June 2005, Issacs went to respondent's office about once a month to obtain a status report on his case. Each time respondent told Issacs that he was working on the matter. Then, in about late 2005, Issacs telephoned respondent and again asked for a status report on his case. Respondent told Issacs that he had filed the complaint, that he was waiting for the superior court to contact him, and that Issacs should be patient.

On several occasions between about January and April 2006, Issacs telephoned respondent and spoke to respondent about Issacs's case. Respondent again told Issacs that he was waiting for the superior court to contact him about the case and to be patient. Respondent, however, never filed a lawsuit for Issacs.

When respondent told Issacs that he had filed a dental malpractice lawsuit for Issacs and that he was waiting for the superior court to contact him, those statements were false, and respondent was grossly negligent in not knowing that the statements were false.

In about October 2006, respondent vacated his official membership address and disconnected the telephone number for his law office. Respondent did not inform Issacs of these facts. Nor did respondent provide Issacs with his new office address or his new phone number. Moreover, as of February 22, 2008, the date on which OCTC filed the NDC in case number 05-O-05006, respondent had not updated his office address on the official membership records of the State Bar.

***Count Eleven – Moral Turpitude (§ 6106)***

The record establishes that respondent engaged in acts involving moral turpitude in willful violation of section 6106 by telling Issacs (1) that he (i.e., respondent) had filed a dental malpractice lawsuit for Issacs and (2) that he (i.e., respondent) was waiting for the superior court to contact him about the case when respondent was grossly negligent in not knowing that his statements were false.

***Count Twelve – Failure to Perform (Rule 3-110(A))***

The record clearly establishes that respondent repeatedly failed to competently perform legal services in willful violation of rule 3-110(A) when respondent failed to file a dental malpractice lawsuit for Issacs from about late September 2004 through about April 2006.

***Count Thirteen – Improper Withdrawal From Employment (Rule 3-700(A)(2))***

In count thirteen, OCTC contends that respondent constructively terminated his representation of Issacs in October 2006 because respondent did not (1) file a dental malpractice lawsuit for Issacs, (2) inform Issacs that he was vacating his office or that he was disconnecting his office telephone number, or (3) provide Issacs with his new office address and telephone number. Resolving all reasonable doubts in respondent's favor, the record does not establish, by clear and convincing evidence, that respondent constructively terminated his representation of Issacs. The record does not suggest, much less establish by clear and convincing evidence, that Issacs was unable to locate or communicate with respondent after October 2006 when respondent moved his law office and changed his office telephone number.[9] Thus, OCTC failed to established that respondent constructively terminated his representation of Issacs when he vacated his office and disconnected his office telephone in October 2006. Because OCTC failed to established that respondent's employment by Issacs had been terminated, whether by respondent or by Issacs, no violation of rule 3-700(A)(2) is shown. Accordingly, count thirteen is dismissed with prejudice.

***Count Fourteen – Failure to Update Official State Bar Address (§ 6068, subd. (j))***

The record clearly establishes that respondent willfully violated section 6068, subdivision (j) when he failed to update his office address and telephone number on the official membership records of the State Bar from October 2006 through at least February 22, 2008.

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[9] For example, Issacs might have had respondent's home address or telephone number and contacted respondent at home. In addition, Issacs might have obtained respondent's new address and telephone number from 411 -- telephone directory assistance.

**D. Garg Client Matters (Case No. 05-O-01026-RAH)**

**1. The Burnham Lawsuit**

In November 2002, Mr. Sushil Garg hired respondent to represent him a lawsuit against John Burnham & Company, an insurance broker, for negligence and other things. Under the retainer agreement between respondent and Garg, respondent's was to be paid attorney's fees of $125 per hour, up to a maximum of $25,000. On January 24, 2003, respondent filed a complaint against John Burnham & Company (hereafter Burnham) in the Orange County Superior Court for Garg (hereafter the Burnham lawsuit).

Not long after the trial in the Burnham lawsuit began on February 2, 2004, the parties agreed to settle the lawsuit for $45,000 paid to Garg by Burnham. That same day, the parties put the settlement on the record before the superior court. To give Burnham time to pay the $45,000 to Garg, the superior court set an order to show cause (hereafter OSC) regarding the dismissal of the Burnham lawsuit for April 13, 2002. The superior court told the parties that it would dismiss the lawsuit if none of the parties appeared on the OSC on April 13, 2002.

Sometime between about February 2 and March 31, 2004, respondent spoke with Attorney John Levitt, who was Burnham's attorney of record. Even though respondent was not entitled to any portion of the $45,000, respondent asked Attorney Levitt (1) to have the $45,000 settlement check made payable to "Kevin P. Bjerregaard, Attorney at Law" (instead of to Sushil Garg) and (2) to let respondent pick up the settlement check from Burnham's office.

Respondent told Attorney Levitt (1) that Garg owed respondent a substantial amount in attorney's fees and (2) that Garg had agreed to use the $45,000 settlement proceeds in the Burnham lawsuit to pay a portion of those fees. When respondent made those statements to Levitt, the statements were false. Garg did not owe respondent any money. In fact, respondent owed money to Garg. Respondent was grossly negligent in not knowing that his statements to

Levitt were false. Respondent made the false statements to induce Levitt to have the settlement check made payable and available to respondent.

On about March 31, 2004, Burnham gave, to a member of respondent's office staff, the $45,000 settlement check, which was made payable to "Kevin P. Bjerregaard, Attorney at Law," but bore a notation that it was for the "Sushil Garg Settlement." On April 1, 2004, respondent deposited that $45,000 check into a bank account that was not a trust account.

On April 13, 2004, the superior court dismissed the Burnham lawsuit because none of the parties appeared on the OSC.

On June 4, 2004, respondent prepared and gave Garg a written report on the Burnham lawsuit. In that report, respondent made the following statements: "The trial in this matter is concluded, with a settlement of $45,000. It took additional appearances in court, an order and additional negotiations to frame settlement to maximize our position in the Golden Eagle Case." "Pursuant to the Settlement Agreement and Court Order payment is due thirty (30) days from the fully executed agreement, i.e., on July 3, 2004." "Please advise as to how you want the check made payable as soon as possible."

At the time that respondent prepared and gave that June 4, 2004 report to Garg, those statements were deceptive because (1) just two months earlier, Burnham gave a member of respondent's office staff at respondent's request a $45,000 settlement check made payable only to respondent, which check respondent deposited into a bank account that is not a trust account; (2) because the only posttrial order filed in the Burnham lawsuit was the April 13, 2004 dismissal order; and (3) because the parties never executed a settlement agreement in the Burnham lawsuit since they put the settlement terms on the record in the superior court. At the time respondent prepared and gave the report to Garg, respondent was grossly negligent in not knowing these statements were deceptive.

On about June 4, 2004, respondent prepared and gave Garg an invoice for legal services in which respondent billed Garg for 12.3 hours of work that respondent purportedly performed after he deposited the $45,000 settlement check in the bank on April 1, 2004. With respect to those 12.3 hours, 3.8 of them were purportedly for preparing an ex parte application on April 29, 2004; another 3.8 of the hours were purportedly for appearing before the superior court on the ex parte application on April 30, 2004; and another 1.6 of the hours were purportedly for preparing a revised settlement agreement pursuant to the transcript of a May 6, 2004 hearing in the superior court.

At the time respondent prepared and gave the June 4, 2004 invoice to Garg, the invoice was deceptive because no court hearings were held in the Burnham lawsuit after the first and only day of trial on February 2, 2004. In fact, the superior court dismissed the Burnham lawsuit on April 13, 2004, when none of the parties appeared in court on the OSC. At the time respondent prepared and gave the invoice to Garg, respondent was grossly negligent in not knowing that it was deceptive.

On about August 17, 2004, R. P. Singhal, who was one of Garg's representatives, spoke with respondent and asked for a status report on the $45,000. Respondent told Singhal that he would call Levitt and seek immediate payment of the $45,000. At the time that respondent made that statement to Singhal, the statement was deceptive because respondent had previously obtained and deposited the $45,000 into a bank account that is not a trust account. Respondent was grossly negligent in not knowing that the statement was deceptive at the time he made it.

As of March 4, 2008, the date on which OCTC filed the NDC in case number 05-O-01026-RAH, respondent had not paid any portion of the $45,000 settlement proceeds to Garg.

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***Count One – Misrepresentation to Opposing Counsel -- Moral Turpitude (§ 6106)***

The record establishes that, by falsely representing, through gross negligence, to Attorney Levitt that Garg owed respondent a substantial amount in attorney's fees and that Garg agreed to use the $45,000 settlement proceeds to pay a portion of those fees to induce Levitt to have Burnham's $45,000 settlement check made payable and available to respondent, respondent committed an act involving moral turpitude in willful violation of section 6106.

***Count Two – Trust Account Violations (Rule 4-100(A))***

The record clearly establishes that respondent failed to deposit the $45,000 settlement check from Burnham into his client trust account in willful violation of rule 4-100(A).

***Count Three – Misappropriation - Moral Turpitude (§ 6106)***

The record establishes that respondent misappropriated, for his own use and benefit, the $45,000 in settlement proceeds from Garg. Even though the record establishes only that respondent misappropriated the $45,000 through gross negligence, it is clear that a misappropriation of client funds that results from an attorney's gross negligence involves moral turpitude and violates section 6106.

***Count Four -- Misrepresentation to Client -- Moral Turpitude (§ 6106)***

The record establishes that respondent willfully violated section 6106's proscription of acts involving moral turpitude when he (1) misrepresented, through gross negligence, the status of the settlement and payment of the $45,000 in his June 4, 2004 written status report in the Burnham lawsuit to Garg; (2) gave Garg the June 4, 2004 invoice, which included, through gross negligence, deceptive/false entries; and (3) misrepresented to Singhal on about August 17, 2004, through gross negligence the status of the settlement and payment of the $45,000 in the Burnham lawsuit.

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**2. Rackley Lawsuit**

In June 2003, Garg and Garg Data Insurance Systems, Inc. (hereafter GDIS) retained respondent to represent GDIS in a lawsuit that GDIS filed against Rackley Systems, Inc. (hereafter Rackley) over Rackley's payment for a customer list that Garg Data International, Inc. (hereafter GDI) owned. That lawsuit is hereafter referred to as the "Rackley lawsuit."

On about July 1, 2003, respondent filed, in the Rackley lawsuit, a complaint for declaratory relief, which sought a judicial determination of the payment that Rackley owed to GDI for its customer list.

On about June 14, 2004, GDIS, GDI, Garg, or some combination of at least two of them authorized respondent to settle the Rackley lawsuit for about $740,000. Later that same day, respondent communicated that settlement offer to Rackley's attorney of record, Attorney Margaret Rosenthal.

In about August 2004, without the knowledge, consent, or authorization of GDIS, GDI, or Garg, respondent told Attorney Rosenthal that GDIS and Garg now agreed to settle the Rackley lawsuit for only a $248,812.90 payment from Rackley to GDIS. In consideration for the $248,812.90, respondent told Rosenthal (without the knowledge, consent, or authorization of GDIS, GDI or Garg) that GDIS and Garg had agreed to execute an indemnification agreement in which GDIS and Garg would indemnify and hold Rackley harmless for any liability that Rackley might incur should a third party contest Rackley's $248,812.90 payment to GDIS (hereafter indemnification agreement).

In August 2004, when respondent told Attorney Rosenthal that GDIS and Garg had agreed to settle the Rackley lawsuit for a $248,812.90 payment (from Rackley) and to enter into the indemnification agreement, those statements were false, and respondent was grossly negligent in not knowing that the statements were false.

On about August 30, 2004, respondent provided a purported "indemnification agreement" to Attorney Rosenthal, which stated that GDIS and Garg agreed that they would indemnify and hold Rackley harmless for any liability should a third party contest Rackley's $248,812.90 payment to GDIS. Respondent caused the purported indemnification agreement to bear the simulated signature of Garg; however, Garg did not authorize his signature to be placed on the purported indemnification agreement.

Also, on about August 30, 2004, respondent provided a purported "settlement agreement" to Attorney Rosenthal, which stated that GDIS and Garg agreed to settle the Rackley lawsuit for Rackley's payment of $248,812.90 to GDIS. Respondent caused the purported settlement agreement to bear the simulated signature of Garg; however, Garg did not authorize his signature to be placed on the purported settlement agreement.

Finally, on about August 30, 2004, respondent gave Attorney Rosenthal a purported "declaration of Sushil Garg," which stated that Garg declared under penalty of perjury that GDIS had the sole right and title to the customer list that was the gravamen of the Rackley lawsuit. Respondent caused the purported declaration to bear the simulated signature of Garg; however, Garg did not authorize his signature to be placed on the purported declaration.

At the time respondent gave Attorney Rosenthal the purported indemnification agreement, the purported settlement agreement, and the purported declaration of Garg, respondent was grossly negligent in not knowing that Garg did not authorize his signature to be placed on those documents and that Garg did not know about the documents or settlement.

On about September 1, 2004, the superior court filed a "Stipulated Judgment and Order Thereon" in the Rackley lawsuit that is signed by respondent and Attorney Rosenthal (hereafter judgment). The judgment states that GDIS had the sole right and title to the customer list; that

Rackley was the rightful owner of the customer list; that Rackley would pay the $248,821.90 to Garg; and that the parties stipulated to judgment on those terms.

GDIS, GDI and Garg did not authorize respondent to settle the Rackley lawsuit, to accept a $248,812.90 payment in settlement of that lawsuit, or to stipulate to the judgment. When respondent signed the judgment, he was grossly negligent in not knowing that GDIS, GDI, and Garg had not authorized him to settle the Rackley lawsuit, to accept the $248,812.90 payment in settlement of the lawsuit, or to stipulate to the judgment.

Between about February and November 2004, respondent and his law partner, Attorney Robert R. Beauchamp, maintained a client trust account at Pacific Mercantile Bank (hereafter CTA). On about August 27, 2004, respondent mailed Attorney Rosenthal a letter instructing her to have Rackley make the settlement check for the $248,812.90 payable to respondent's CTA. Rosenthal received the letter. Thereafter, on August 30, 2004, Rackley issued a $248,812.90 settlement check made payable only to respondent's CTA. Respondent had no legal entitlement to any portion of the $248,812.90. Respondent received the check, and on about September 1, 2004, respondent caused the check to be deposited into his CTA. After the $248,812.90 check was deposited into respondent's CTA, the CTA balance was $318,182.31.

Respondent did not distribute any funds to, or on behalf of GDIS, GDI, Garg, or Rackley. Between September 13, 2004, and November 8, 2004, the balance in respondent's CTA repeatedly fell below $248,812.90, including but not limited to the following 27 days:

| DATE | BALANCE |
|---|---|
| September 13, 2004 | $245,948.61 |
| September 16, 2004 | $238,007.38 |
| September 17, 2004 | $236,507.38 |
| September 20, 2004 | $226,657.38 |
| September 22, 2004 | $200,618.12 |
| September 23, 2004 | S163,618.12 |
| September 24, 2004 | $152,502.42 |

| DATE | BALANCE |
|---|---|
| September 27, 2004 | $152,052.42 |
| September 28, 2004 | $125,191.30 |
| September 29, 2004 | $114,877.26 |
| September 30, 2004 | $102,623.95 |
| October 4, 2004 | $99,323.95 |
| October 7, 2004 | $99,073.95 |
| October 8, 2004 | $94,143.95 |
| October 12, 2004 | $92,238.90 |
| October 14, 2004 | $77,088.51 |
| October 15, 2004 | $71,838.51 |
| October 20, 2004 | $61,888.51 |
| October 21, 2004 | $56,888.51 |
| October 22, 2004 | $46,388.51 |
| October 25, 2004 | $36,538.51 |
| October 27, 2004 | $24,038.51 |
| October 29, 2004 | $18,064.40 |
| November 1, 2004 | $18,038.51 |
| November 3, 2004 | $16,320.66 |
| November 4, 2004 | $14,320.66 |
| November 8, 2004 | - $1,848.84 |

***Count Five -- Misrepresentation to Opposing Counsel – Moral Turpitude (§ 6106)***

The record establishes that respondent willfully violated section 6106's proscription of acts involving moral turpitude, in August 2004, when respondent told Attorney Rosenthal that GDIS and Garg had agreed to settle the Rackley lawsuit for a $248,812.90 payment (from Rackley to GDIS) and to enter into the indemnification agreement. Respondent was grossly negligent in not knowing that the statements were false.

***Count Six -- Moral Turpitude (§ 6106)***

The record establishes that respondent willfully violated section 6106's proscription of acts involving moral turpitude, on about August 30, 2004, when respondent gave Attorney Rosenthal the purported indemnification agreement, the purported settlement agreement, and the purported declaration of Garg. Respondent was grossly negligent in not knowing that Garg did not authorize his signature to be placed on those documents.

***Count Seven -- Misrepresentation to Superior Court – Moral Turpitude (§ 6106)***

The record establishes that respondent willfully violated section 6106's proscription of acts involving moral turpitude, in August 2004, when respondent caused the judgment in the Rackley lawsuit to be filed. Respondent was grossly negligent in not knowing that GDIS, GDI, and Garg had not authorized him to settle the Rackley lawsuit, to accept the $248,812.90 payment in settlement of that lawsuit, or to stipulate to the judgment.

***Count Eight – Trust Account Violation (Rule 4-100(A))***

The record establishes that respondent willfully violated rule 4-100(A) because he failed to maintain in his CTA at least the $248,812.90 he received on behalf of GDIS, GDI, Garg, and possibly Rackley from September 13 through November 8, 2004.

***Count Nine – Misappropriation – Moral Turpitude (§ 6106)***

The record establishes, at a minimum, that respondent willfully violated section 6106's proscription of acts involving moral turpitude when he misappropriated, through gross negligence and for his own use and benefit, the $248,812.90 he obtained from Rackley in purported settlement of the Rackley lawsuit.

**3. Achieve Proceeding**

On about September 18, 2002, Garg hired respondent to represent GDI in a JAMS proceeding against Achieve Healthcare Information Systems (hereafter Achieve) alleging that Achieve breached it software license and service agreement with GDI (hereafter license agreement). That JAMS proceeding is hereafter referred to as the "Achieve proceeding."

The license agreement required that any dispute be submitted to non-binding mediation. If mediation proved unsuccessful, the license agreement required that any dispute be submitted to binding arbitration pursuant to the rules established by the American Arbitration Association (hereafter AAA). Respondent did not seek to mediate the dispute between GDI and Achieve.

On about July 31, 2003, respondent gave a stipulation for JAMS arbitration (hereafter JAMS stipulation) to Achieve's attorney and to JAMS. That JAMS stipulation stated that GDI stipulated that it would submit its dispute with Achieve to "binding resolution by means of JAMS arbitration." Neither GDI nor Garg knew of or authorized respondent to enter into the JAMS stipulation. Moreover, respondent caused the JAMS stipulation to bear the simulated signature of Garg; however, Garg did not authorize his signature to be placed on that document.

When respondent gave the JAMS stipulation to Achieve's attorney and to JAMS, respondent was grossly negligent in not knowing that neither GDI nor Garg knew about the stipulation or authorized Garg's signature to be placed on that document.

Later, respondent agreed to allow Attorney Richard Chernick to serve as the arbitrator. Respondent did not inform GDI or Garg that he had agreed to arbitrate the matter before Attorney Chernick or obtain GDI's or Garg's authorization to arbitrate the matter before Chernick, which GDI and Garg would not have given as Garg had prior dealing with Chernick's law firm and would not have permitted Chernick to act as the arbitrator.

On about December 2, 2003, Achieve filed an answer and a cross-complaint against GDI in the Achieve proceeding. In its cross-complaint, Achieve sought about $30 million in damages. Respondent did not tell GDI or Garg that the cross-complaint had been filed.
In about February 2004, Achieve took Garg's deposition in the Achieve proceeding and questioned him on the cross-complaint. After the deposition was finished, Garg discussed the cross-complaint with respondent, and respondent told Garg that Achieve was in the process of dismissing the cross-complaint. At that time, respondent was grossly negligent in not knowing that his statement to Garg was false.

Respondent did not perform any legal services of value to GDI or to Garg in the Achieve proceeding. Respondent did not conduct meaningful discovery, retain experts, conduct the

depositions of Achieve's employees or experts, prepare for the binding arbitration, or have Garg or a representative of GDI present to represent GDI during each day of the hearing in the Achieve proceeding.

On about November 2, 2004, the arbitration commenced in the Achieve proceeding. Respondent told Garg that the arbitration hearing was a non-binding mediation. Respondent had Garg appear at the hearing only long enough for Garg to testify. When respondent told Garg that the hearing was non-binding, the statement was false, and respondent was grossly negligent in not knowing that arbitration was binding.

On about November 24, 2004, Attorney Chernick issued the award in the Achieve proceeding. Chernick dismissed the claims of GDI, granted Achieve's counterclaim against GDI for $30,660,000, and granted Achieve the right to use the software that GDI had developed. Respondent received the award, but did not inform GDI or Garg that the award had been rendered.

In about December 2004, Garg discovered movers moving respondent's personal property and client files from the office that respondent leased from Garg in one of Garg's businesses. Respondent, however, was not there; respondent's stepdaughter/employee was supervising the removal. Garg ask respondent's stepdaughter/employee to release the client files of, among others, GDIS, GDI, and Garg, including the client files in the Burnham lawsuit, the Rackley lawsuit, and the Achieve proceeding. When respondent's stepdaughter/employee refused to release the files, Garg called the police. The police were able to obtain portions of the client files relating to, among others, the Burnham lawsuit, the Rackley lawsuit, and the Achieve proceeding.

Between about December 2004 and January 2005, Garg called respondent approximately three to five times to obtain the remainder of his files. Garg was unable to speak with respondent

and left messages for him on his telephone voice message system to call Garg to arrange a date and time for respondent to release the remainder of the files to Garg. Respondent received the messages, but did not deliver the remainder of the files to GDI, GDIS, or Garg.

***Count Ten – Failure to Perform (Rule 3-110(A))***

The record establishes that respondent recklessly and repeatedly failed to perform legal services competently in willful violation on rule 3-110(A) by not mediating the disputed in the Achieve proceeding and by not performing any legal services of value in the Achieve proceeding.

***Count Eleven -- Misrepresentation to Opposing Counsel & the Arbitrator (§ 6106)***

The record establishes that respondent willfully violated section 6106's proscription of acts involving moral turpitude. Respondent submitted the JAMS stipulation to the attorney for Achieve and to JAMS when respondent was grossly negligent in not knowing that Garg had not authorized his signature to be placed on that document.

***Count Twelve – Failure to Communicate (§ 6068, subd. (m))***

Respondent willfully violated section 6068, subdivision (m), by failing to inform GDI or Garg that he had waived mediation; that he had transferred GDI's claim from AAA arbitration to JAMS arbitration; that he had agreed to Attorney Chernick as the mediator; that Achieve had filed a cross-complaint; and that Attorney Chernick had rendered an award granting Achieve's cross-complaint against GDI for $30,660,000.

***Count Thirteen – Misrepresentation to Clients – Moral Turpitude (§ 6106)***

The record establishes that respondent willfully violated section 6106's proscription of acts involving moral turpitude when he misrepresented, through gross negligence, to GDI and Garg that Achieve was in the process of dismissing the cross-complaint in the Achieve proceeding and that the binding arbitration hearing was non-binding mediation.

***Count Fourteen – Failure to Release File (Rule 3-700(D)(1))***

The record establishes that respondent willfully violated rule 3-700(D)(1) by failing to provide GDIS, GDI, and Garg complete copies of their client files in accordance with their requests.

## IV. AGGRAVATION & MITIGATION

### A. Aggravation

Respondent's misconduct in this consolidated proceeding involves multiple acts of misconduct. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(ii).)[10]

Respondent failed to appear for trial, which allowed his defaults to be entered. (Std. 1.2(b)(vi).)

Respondent's misconduct caused significant client harm. (Std. 1.2(b)(iv).)

### B. Mitigation

Respondent does not have a prior record of discipline. (Std. 1.2(e)(i).) The court takes judicial notice of the State Bar's official membership records, which establish that respondent has no prior record of discipline.[11] Accordingly, respondent is entitled to significant mitigation for his 16 years of misconduct-free practice from his admission in June 1987 through mid-2003, when he first engaged in the misconduct found in this proceeding.

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[10]All further references to standards are to this source.

[11] Because of the importance that our Supreme Court places on the issue of whether or not an attorney has a prior record of discipline (e.g., *In re Mostman* (1989) 47 Cal.3d 725, 741), the State Bar Court has long judicially noticed the State Bar's official records to determine the presence or the lack of a prior record of discipline.

## V. DISCUSSION ON DISCIPLINE

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Ba*r (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to caselaw for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylo*r (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for respondent 's misconduct is found in standard 2.2(a), which applies to respondent's section 6106 misappropriations through gross negligence totaling $301,340.27 in the Laguna Collection client matter; the Arroyo client matter; the Burnham lawsuit in the Garg client matter; and the Rackley lawsuit in Garg client matter. Standard 2.2(a) provides:

> Culpability of a member of wilful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of funds or property misappropriated is insignificantly small or if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.

The Supreme Court has repeatedly held that misappropriation of trust funds is a grievous violation. Moreover, the Supreme Court has made clear that even an isolated instance of misappropriation by an attorney without a prior record of discipline may result in disbarment in the absence of compelling mitigation. (*Chang v. State Bar* (1989) 49 Cal.3d 114, 128-129; *Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1071-1073.) As noted above, respondent is entitled to substantial mitigation for his 16 years of misconduct-free practice. But that mitigation,

thought substantial, is clearly not compelling particularly in light of the extremely serious misconduct found in this consolidated proceeding.

In sum, both the standards and the caselaw strongly counsel recommending respondent's disbarment in this proceeding. Moreover, the court independently concludes that respondent should be ordered to make restitution with interest for his four misappropriations totaling $301,340.27.

## VI. DISCIPLINE RECOMMENDATION

The court recommends that respondent **KEVIN PAUL BJERREGAARD** be DISBARRED from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

The court further recommends that Kevin Paul Bjerregaard be ordered to make restitution to Limar, LLC, dba the "Aegean Café"; Connie Apple dba "Pure Living"; Brad Morrison dba "Gregor Stevens Salon"; and How Original jointly in the amount of $6,527.37 plus 10 percent interest per year from July 30, 2005 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Limar, LLC, dba the "Aegean Café"; Connie Apple dba "Pure Living"; Brad Morrison dba "Gregor Stevens Salon"; and How Original plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that Kevin Paul Bjerregaard be ordered to make restitution to Nick and Erin Arroyo in the amount of $1,000 plus 10 percent interest per year from September 12, 2005 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Nick or Erin Arroyo plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that Kevin Paul Bjerregaard be ordered to make restitution to Sushil Garg in the amount of $45,000 plus 10 percent interest per year from April 1, 2004 (or

reimburse the Client Security Fund, to the extent of any payment from the fund to Sushil Garg plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that Kevin Paul Bjerregaard be ordered to make restitution to Garg Data Insurance Systems, Inc. (or its successor-in –interest) in the amount of $248,812.90 plus 10 percent interest per year from September 1, 2004 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Garg Data Insurance Systems, Inc. (or its successor-in –interest) plus interest and costs in accordance with Business and Professions Code section 6140.5).

The court further recommends that any restitution to the Client Security Fund be enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

## VII. RULE 9.20 & COSTS

The court further recommends that Kevin Paul Bjerregaard be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.[12]

Finally, the court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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[12] Bjerregaard is required to file a rule 9.20(c) compliance affidavit even if he has no clients to notify *on the date the Supreme Court files its order in this proceeding*. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

## VIII. ORDER OF INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Kevin Paul Bjerregaard be involuntary enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: May 24, 2010.

**RICHARD A. HONN**
Judge of the State Bar Court